

1 Anthony E. McNamer (SBN 178911)
2 **MCNAMER AND COMPANY**
3 519 SW Third Ave, Suite 601
4 Portland, Oregon 97204
5 Telephone: 503.727.2504
6 Facsimile: 503.727.2501
7 E-Mail: anthony@mcnamerlaw.com

8
9 Attorneys for Plaintiff
10 JONATHAN BROWNING, INC.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JONATHAN BROWNING, INC.,

Plaintiff,

v.

VENETIAN CASINO RESORT, LLC, et al.,

Defendants.

Case No.: C 07-3983 JSW

**DECLARATION OF ANTHONY
MCNAMER IN SUPPORT OF
MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT**

Date: December 12, 2008
Time: 9:00am
Place: Courtroom 2
Judge: Hon. Jeffrey S. White

I, Anthony McNamer, declare as follows:

1. I represent the Plaintiff in the above-entitled matter.
2. I make this declaration in support of Plaintiff's Motion for Leave to File First Amended Complaint.
3. Plaintiff produced 275 pages of documents in June 2008, and has approximately 400 more pages of documents ready to produce. After Plaintiff's production, and the June 19, 2008 deposition of Jonathan Browning's person most knowledgeable, Defendants produced 222 pages of documents. Defendants apparently have thousands more pages of electronic documents to produce. The parties agreed on electronic search terms on June 20, 2008, and Defendants stated they believed the documents would be produced in early August. Attached at Exhibit 1 hereto is a true and

Case No.: C 07-3983 JSW

DECLARATION OF ANTHONY MCNAMER IN SUPPORT OF MOTION TO AMEND

1 correct copy if the email exchanges related to the electronic discovery terms and Defendants
2 estimate that it would be just over a month from June 30, 2008 when documents would be produced.

3 4. Though Plaintiff served deposition notices for the person most knowledgeable
4 depositions of Defendants on June 16, 2008, based on Defendants failure to provide discovery (and
5 promise that such discovery would be forthcoming in August) the person most knowledgeable
6 depositions of the Defendants were stayed pending the production. Defendants failed to produce
7 any further documents, and have refused to provide any indication about when such documents will
8 be produced. Defendants' failure to produce further documents has made it impossible for Plaintiff
9 to move forward with any of its depositions.

10 5. Only one deposition has taken place. Defendants took the deposition of the person
11 most knowledgeable at Jonathan Browning on June 19, 2008.

12 6. Based upon Plaintiff's my review of the documents produced by both parties, and the
13 testimony presented at the June 19, 2008 deposition, on July 1, 2008 I informed Defendant of
14 Plaintiff's intent to amend the Complaint to conform to the evidence. Significantly, the documents
15 and testimony revealed the original hand drawings of the two sconces at issue, which hand drawings
16 were themselves copyrighted and which drawings were infringed when Defendants copied, or had
17 others copy, the designs of the Jonathan Browning sconces. Plaintiff thus filed for, and received,
18 U.S. Copyright Registrations in the "Original Hand Drawing of Trianon" and the "Original Hand
19 Drawing of Ledoux" (collectively the "Original Drawings"). Plaintiff also sought to conform the
20 complaint to the evidence regarding the total number of sconces copied, and the use of those sconces
21 at the Palazzo Hotel, which evidence was found in documents produced by Defendants. Finally,
22 Plaintiff sought to correct a typographical error in its corporate name.

23 7. A copy of the proposed Amended Complaint was sent to Defendants on August 4,
24 2008. Defendants initially only requested that the prior dismissed claims be removed and typo be
25 corrected, so a revised Amended Complaint was sent on August 13, 2008. On August 19, 2008
26 Defendants' counsel sent a letter informing Plaintiff that Defendants objected to the proposed
27 amendments as "contrary to the law and the Court's prior rulings" and refused to stipulate to the
28 amendments.

1 I hereby declare that the above statement is true to the best of my knowledge and belief and that I
2 understand that is made for use as evidence in court and is subject to penalty for perjury.

3
4 EXECUTED on August 26, 2008 in Portland, Oregon

5
6 s/Anthony McNamer/
7 Anthony McNamer
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

From: Anthony McNamer <anthony@mcnamerlaw.com>
Subject: **Re: Proposed Search Terms**
Date: July 1, 2008 4:58:06 PM PDT
To: "Hon, Michelle" <MHon@duanemorris.com>
Cc: "Wong, Ray L." <RLWong@duanemorris.com>, Anthony McNamer <anthony@mcnamerlaw.com>

July 8 is off.

Re August - are you confident I'll have everything before the first week of August so we can set an depo in the first week of August?

Regardless of the initial request, do you have an objection to me amending to conform to the evidence? I'll send out an additional RFP once that happens and include the Palazzo docs in that request.

Anthony E. McNamer, Esq.
McNamer and Company
519 SW Third Ave, Suite 601
Portland, Oregon 97204
ph: 503.727.2504 fax: 503.727.2501
<<http://www.mcnamerlaw.com/attorneysMcNamerBio.html>>
Please Note Name and Email Change

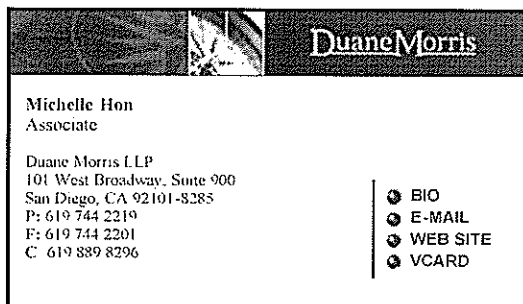
On Jul 1, 2008, at 4:48 PM, Hon, Michelle wrote:

Mr. McNamer,

1. I am not sure what your question was regarding the first week in August. Could you please clarify?
2. We have produced all hard documents.
3. We have never discussed an amendment to include allegations relating to the Palazzo. We agreed to produce documents relating to the Palazzo solely for mediation. We reserved all rights to object to discovery requests and the fact the documents were voluntarily disclosed for settlement purposes has no effect on this litigation. Nor has any evidence been introduced relating to the Palazzo Hotel. Therefore, there is no basis to amend to conform to the evidence. We additionally note, that the discovery requests specifically request documents relating to the Venetian Tower Remodeling Project. Thus, the Palazzo documents are not responsive to plaintiff's request.

Please let us know as soon as possible whether or not we are going to proceed with the deposition on July 8, 2008.

Thank you,



From: Anthony McNamer [<mailto:anthony@mcnamerlaw.com>]
Sent: Tuesday, July 01, 2008 2:38 PM
To: Hon, Michelle
Cc: Wong, Ray L.; Anthony McNamer
Subject: Re: Proposed Search Terms

Importance: High

You didn't answer my question about fist week of August? Also are there no other hard docs to produce?

Finally, i don't know what conversations you had with Bingham about amending to conform to the evidence (of your client using the same lights in the Palazzo remodel). I assume, since discovery has just begun and since I agreed to an extension, you have no problem with me amending to include claims about the Palazzo. Please let me know about that so we can resolve this objection about Palazzo documents (since it's clearly the same claims).

Anthony E. McNamer, Esq.

McNamer and Company

519 SW Third Ave, Suite 601

Portland, Oregon 97204

ph: 503.727.2504 fax: 503.727.2501

<<http://www.mcnamerlaw.com/attorneysMcNamerBio.html>>

Please Note Name and Email Change

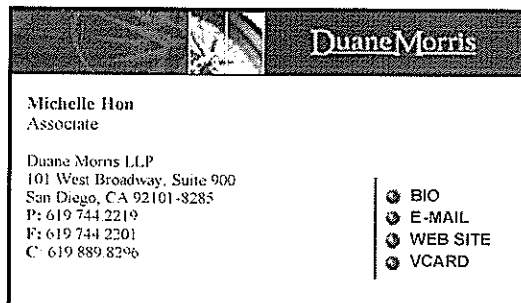
On Jul 1, 2008, at 2:05 PM, Hon, Michelle wrote:

Mr. McNamer,

Can you please let us know whether this deposition is going forward next week or whether you would prefer to wait until August?

Thank you,

Michelle



From: Anthony McNamer [<mailto:anthony@mcnamerlaw.com>]

Sent: Monday, June 30, 2008 12:38 PM

To: Hon, Michelle

Cc: Wong, Ray L.; Anthony McNamer

Subject: Re: Proposed Search Terms

So first week in August? If we think we'll have most things produced, then it may make sense to wait. Let me talk to my client.

We should have all the other docs that were discussed in the depositions to you guys EO next week.

Anthony E. McNamer, Esq.

McNamer and Company

519 SW Third Ave, Suite 601

Portland, Oregon 97204

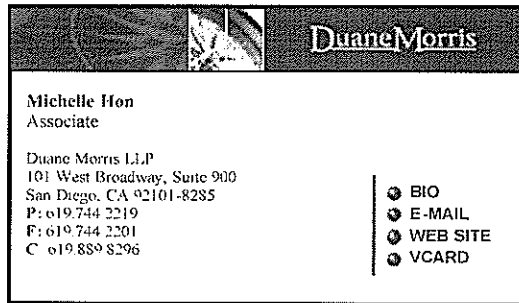
ph: 503.727.2504 fax: 503.727.2501

<<http://www.mcnamerlaw.com/attorneysMcNamerBio.html>>

Please Note Name and Email Change

On Jun 30, 2008, at 12:30 PM, Hon, Michelle wrote:

We will not have a definite estimate until we run the search terms and get the data loaded into a review database. However, I don't anticipate that we will be able to produce electronic data for at least one month. If you would like to wait until then let us know.



From: Anthony McNamer [<mailto:anthony@mcnamerlaw.com>]

Sent: Monday, June 30, 2008 12:10 PM

To: Hon, Michelle

Cc: Wong, Ray L.; Anthony McNamer

Subject: Re: Proposed Search Terms

When do you think you will have the docs you're getting from the electronic discovery? May make more sense to wait until then, so we don't have to depose the same person twice.

Anthony E. McNamer, Esq.

McNamer and Company

519 SW Third Ave, Suite 601

Portland, Oregon 97204

ph: 503.727.2504 fax: 503.727.2501

<<http://www.mcnamerlaw.com/attorneysMcNamerBio.html>>

Please Note Name and Email Change

On Jun 30, 2008, at 11:54 AM, Hon, Michelle wrote:

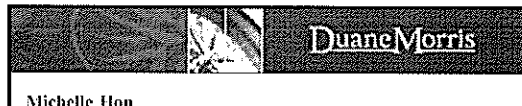
Mr. McNamer,

We have confirmed that the person most knowledgeable for the Venetian and LV Sands Corp. will be the same person. That person is available on July 8, 2008 for deposition. Please let us know as soon as possible if you are available that day. As we previously discussed, the deposition will take place in Las Vegas Nevada. If you have no objections, we would prefer to have the deposition take place at the Venetian Resort.

There is no person knowledgeable at LV Sands LLC for the subject matters listed in the Notice of Deposition. As such, we will not be producing anyone for the deposition as noticed. We will be serving formal objections to the Notices shortly.

Regards,

Michelle



From: "Hon, Michelle" <MHon@duanemorris.com>
Subject: **RE: Proposed Search Terms**
Date: June 24, 2008 6:04:57 PM PDT
To: "Anthony McNamer" <anthony@mcnamerlaw.com>
Cc: "Wong, Ray L." <RLWong@duanemorris.com>

Mr. McNamer,

To follow-up on our met and confer on June 20, 2008 regarding search terms:

Acceptable Terms: The following terms appear to be acceptable. We have submitted these terms to our discovery vendor and are waiting to hear back from them as to whether there are any issues with these from a technical standpoint.

diamondlife
jonathanbrowning
MRB500
MRA500
MRB-500
MRA-500
Ledoux
Trianon
urbanainc
kalmar
taiyang
sequoia
MRXB-500
MRXA-500
MRXB500
MRXA500

Numbers: We will consider using these numbers as search terms if you (1) explain how each number is relevant and (2) if the numbers are used in combination with one or more additional search terms. For example: 00308045 and (PO or Purchase Order). We are not trying to reach attorney work product, but simply need to know the relevance of each number so that we know whether the documents are responsive to Browning's request.

0010-12-357
110-0001
5216138
6374
5216147
6424
9181750
00308045
00308004
00310118x
5299001

Sconce: As we discussed, the MRA/B 500 light fixtures are not the only "sconce" style light fixtures installed at the Venetian. As such, we expect that this term is too generic and likely will result in a substantially large proportion of unresponsive hits. We will consider running this search term if Browning agrees that it may be later removed if it results in a burdensome number of hits or alternatively, if Browning agrees to share the cost to have a third party review the search hits to remove unresponsive hits.

Unacceptable Terms:

tibor - not relevant

Marco - too common . We would consider an email address and/or first and last name

Sutherland - too many non-responsive hits. The Venetian uses the David Sutherland showroom for many of the fixtures and furnishings used in the hotel and casino. We think it unlikely that any responsive documents would include only this term and not any of the terms discussed above. We would consider using this term if it is used in combination with another term.

Regards,



Duane Morris LLP
101 West Broadway, Suite 900
San Diego, CA 92101-8285
P: 619.744.2219
F: 619.744.2201
C: 619.889.8296

BIO
E-MAIL
WEB SITE
VCARD

From: Anthony McNamer [<mailto:anthonyv@mcnamerlaw.com>]
Sent: Friday, June 13, 2008 3:18 PM
To: Hon, Michelle
Cc: Anthony McNamer
Subject: Re: Proposed Search Terms

Unless you have documents that randomly have the exact same 4 to 10 digit patterns (and the odds are literally in the 1/1,000,000 range) then the numbers will not pick up random results.

I don't think I need to explain my choices (and reveal potential work product), but the names are potential people/companies that would be involved in the initial discussions with JB or the subsequent ordering from Diamond Life. dlife is the email address on Diamond Life's invoice. The numbers are either PO numbers for the sconces, or product numbers for the sconces (and two are the number of sconces ordered). The last 4 numbers are alternative numbers that are sometimes used instead of MRB-500 and MRA-500.

You're unclear why "sconce" is relevant?

Anthony E. McNamer, Esq.
McNamer and Company
519 SW Third Ave, Suite 601
Portland, Oregon 97204
ph: 503.727.2504 fax: 503.727.2501
<<http://www.mcnamerlaw.com/attorneysMcNamerBio.html>>
Please Note Name and Email Change

On Jun 13, 2008, at 2:36 PM, Hon, Michelle wrote:

Mr. McNamer,

We agree to the add following terms:
diamondlife
jonathanbrowning
MRB500
MRA500
Ledoux
Trianon

We believe the following terms and random numbers will return too many false positives. We are particularly concerned with the numbers, which may pick up a significant amount of random results based on meta data and computer programs. Additionally, the particular relevance is unclear.

Sutherland
Sconce
dlife
Marco
0010-12-357
110-0001
5216138
6374
5216147
6424
9181750
00308045
00308004

00310118x
5299001

Please explain how the following terms are relevant to any claims or defenses:

urbanainc

kalmar

taiyang

sequoia

tibor

MRXB-500

MRXA-500

MRXB500

MRXA500

From: Anthony McNamer [<mailto:anthony@mcnamerlaw.com>]

Sent: Friday, June 13, 2008 1:41 PM

To: Hon, Michelle

Cc: Anthony McNamer

Subject: Re: Proposed Search Terms

It will need to include the following. Since these are very specific I can't imagine you'll get any false hits on any of these except possibly Marco and Sutherland:

diamondlife

dlife

jonathanbrowning

MRB500

MRA500

MRXB-500

MRXA-500

MRXB500

MRXA500

Sutherland

Sconce

Ledoux

Trianon

Marco

urbanainc

kalmar

taiyang

sequoia

tibor

0010-12-357

110-0001

5216138

6374

5216147

6424

9181750

00308045

00308004

00310118x

5299001

Anthony E. McNamer, Esq.

McNamer and Company

519 SW Third Ave, Suite 601

Portland, Oregon 97204

ph: 503.727.2504 fax: 503.727.2501

<<http://www.mcnamerlaw.com/attorneysMcNamerBio.html>>

Please Note Name and Email Change

On Jun 13, 2008, at 11:56 AM, Hon, Michelle wrote:

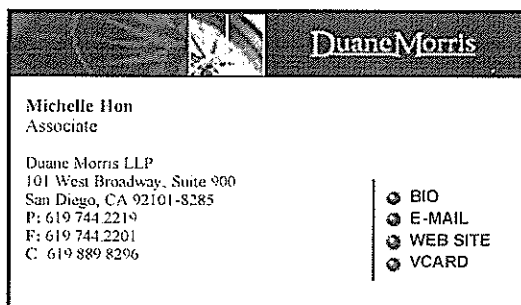
Mr. McNamer,

Per our meet and confer this morning, our proposed search terms are listed below. Please let us know if you have any objections or additions to the proposed list. We would like to stipulate to these terms so that electronic discovery is not further delayed.

Search Terms:

Jonathan Browning
Diamond Life
MRA-500
MRB-500
CR-501

Regards,



Confidentiality Notice: This electronic mail transmission is privileged and confidential and is intended only for the review of the party to whom it is addressed. If you have received this transmission in error, please immediately return it to the sender. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege.

Confidentiality Notice: This electronic mail transmission is privileged and confidential and is intended only for the review of the party to whom it is addressed. If you have received this transmission in error, please immediately return it to the sender. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege.

Confidentiality Notice: This electronic mail transmission is privileged and confidential and is intended only for the review of the party to whom it is addressed. If you have received this transmission in error, please immediately return it to the sender. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege.